IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12466 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SOHANLAL TOLIRAM SANVARIYA - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR HR PRAJAPATI for Petitioner(s) : 1,
MR KRUNAL D PANDYA, AGP for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 23/04/2007

ORAL JUDGMENT

The only grievance that has been made in this petition to challenge the impugned order is that at the time of issuance of show cause

notice calling upon the petitioner why his licence should not be cancelled, the respondent has not supplied the copies of the necessary documents, namely the panchnama, the statements of various persons which were recorded during the inquiry on the basis of which the show cause notice has been issued, etc. According to the petitioner, in absence of such documents, the petitioner has not been able to defend his interest effectively. According to him, the impugned order is, therefore, in violation of principles of natural justice.

2. It appears from the record of the petition that the petitioner was having licence to run fair price shop near Government press in Anandpura locality in the City of Vadodara. On surprise checking, that was made on 16/7/2002, it was found that the petitioner had indulged into certain mal-practices and had committed various illegalities and irregularities. In view of the same, initial inquiry was made and on the basis of the same, show cause notice dated 12/9/2002 was issued. Thereafter, after holding the inquiry the authority cancelled the licence of the petitioner by order dated 7/10/2002. Being aggrieved by the same, the petitioner preferred appeal before the appellate authority i.e., the Collector, Vadodara District. By order dated 13-17/1/2003 the Collector observed that upon hearing the petitioner, it appeared that the petitioner had not received details of the transferred ration cards, the list of alleged bogus ration cards, etc. He, therefore, quashed the said order and remanded the matter for rehearing.

2.1. Upon rehearing the matter, the authority i.e respondent no. 3 took

the same view and passed order cancelling the licence of the petitioner, against which the petitioner preferred appeal before the Collector i.e respondent no. 2 and thereafter revision application before the respondent no. 1, but the petitioner met the failure. Hence this petition.

3. I have heard Mr. HR Prajapati, learned advocate for the petiti and Mr. Krunal D Pandya, Ld. AGP for the respondents. The sole submission that has been advanced by the learned advocate for the petitioner is that the respondents have not fully complied with the principles of natural justice in asmuch as despite the grievance made at the earliest about the non-supply of relevant documents, the respondents have not taken care to see that these documents were made available to the petitioner at the earliest so as to defend his interest effectively. According to Mr. Prajapati, admittedly at the initial stage, these documents were not made available and, therefore, respondent no. 2 had remanded the matter to respondent no. 3. Even at that stage, the petitioner did not receive copies of the relevant documents and, therefore, the petitioner was unable to fight out the case effectively.

3.1. As against that, Mr. Pandya has submitted that the record shows that these documents might have been forwarded to the petitioner by post and, therefore, there is reason to believe that he had received the same and not prejudice was caused to him.

4. Considering the aforesaid submissions and also the record of the

petition, it appears that at the initial stage admittedly, these documents were not made available to the petitioner. Even at a later stage i.e after the matter was remanded to respondent no. 3 for reconsideration, it is not very certain whether the documents were supplied to the petitioner. There is merely conjecture that the documents might have been sent by post to the petitioner, which might have been received by him. However, there is no acknowledgment receipt of the Postal Department on record of the case. Even the affidavit of the respondents is totally silent on this aspect. There is no other reliable material placed on record by the respondents to controvert this submission of the petitioner. In view of the same, it appears that the contention raised by the petitioner is true. If that be so, it is in contravention of the circular issued by the Food & Civil Supplies Department of Government of Gujarat, copy whereof is produced at Annexure-J to the affidavit-in-rejoinder and in the said circular specific guidelines have been prescribed that along with show cause notice, the noticee should be served with documents such as panchnama, the statements recorded on the spot, the record seized during inspection, etc. When this is the position and when there is no conclusive proof regarding supply of relevant documents to the petitioner by respondents, there is no reason to disbelieve the say of the petitioner. When this is so, it is obvious that the petitioner has not been granted adequate opportunity to defend his interest and thereby the respondents have committed the gross violation of principles of natural justice. In the circumstances, the impugned orders dated 27/3/2003 passed by the respondent

no. 3, order dated 11/6/2003 passed by respondent no. 2 and order dated 17/4/2004 passed by respondent no. 1 are hereby quashed and set aside. The respondents are directed to issue fresh show cause notice along with copies of the relevant documents in a manner so as to reach the petitioner positively and to grant him rehearing and to decide the issue afresh.

With aforesaid direction, the petition is allowed. Rule made absolute with no order as to costs.

[Akshay H Mehta, J.]

* Pansala.